

John Price, Esq; Appellant.

Thomas Button, Esq; Administrator of  
Diana his late Wife, Respondent.

## The Respondent's CASE.

**A**NNE PRICE, the said Diana's Grandmother, being seized in Fee of certain Freehold and Customary Lands in *Wisteston*, and elsewhere, in *Com' Hereford*, of about 300 *l. per Ann.* 12th of July, 1688. Surrenders the Copy-hold Lands to *Thomas Price*, deceased, (the Appellant's Father) and the said Diana and their Heirs to such purposes as he should direct: And by a Deed dated 2d of April, 1687, (reciting the said Surrender) declares the intent of such Surrender to be for the raising 3000 *l.* Portion, and an Annuity of 40 *l. per Ann.* for the said Diana, and Corroborating the former Securities for that purpose.

The said Ann farther to secure the said Portion and Annuity by a Codicil annex to her Last Will, and Dated 7th of July 1684. devises all her Freehold-Lands to Defendants, *Masters*, and *Westphaling* for 500 Years in Trust, for the raising the said 3000 *l.* Portion, and Annuity of 40 *l. per Ann.* till Payment.

1689. Ann Price the Grandmother died, and the Appellant, and his Father, have ever since been in Possession of the said Trust-Lands, charged with the said 3000 *l.* Portion and Annuity.

That Diana, in Obedience to her Father's Commands, joined in the Sale of other Lands (which were formerly charged with her Portion of 3000 *l.* upon her Mother's Marriage) being told by her said Father at the same time, that her Grandmother's said Settlement was good and sufficient to secure her said Portion and Annuity, as the Appellant knew to be true before he entered into the Agreement hereafter mentioned.

That in 1693. The Respondent Intermarried with the said Diana, and the Appellant soon after the Marriage being in the Possession of the said Trust-Estate, applied to the Respondent, and represented to him the Incumbrances which the Appellant's Estate lay under, and the insufficiency of the Estate liable to secure the whole 3000 *l.* and therefore desired an abatement of the Portion which he was to pay to his Sister out of the said Estate.

That the Respondent out of Brotherly Affection, and in Consideration of the said Incumbrances, and to quiet all differences concerning what Lands were liable to his Wife's Portion, and what were not so liable, agreed to accept of 2500 *l.* in full of the 3000 *l.* and to abate the Arrears of the Annuity (which were 500 *l.* more) which the said Appellant thankfully accepted, and it was agreed, that the Appellant should pay 1000 *l.* down in part, and the remaining 1500 *l.* in four Years after, with 60 *l.* yearly, for the forbearance; and upon payment thereof, the Respondent was to Surrender and Assign all his Right to the Trust-Estate to the Appellant; which Agreement by subsequent Letters under the Appellant's hand, was acknowledged by him to be a very favourable Agreement, with repeated promises to stand to the same.

That in Pursuance of the said Agreement in December 1694. the Appellant paid the Respondent 810 *l.* in part; and a Receipt having been signed by the Respondent and his Wife for 852 *l.* 10 s. 6 d. (that being the Sum expected to be paid) and the Appellant accepted of the said Receipt, and therein the said Agreement was recited, and the Appellant at the same time gave a Note under his hand to Re-deliver the first Receipt upon giving another for the said 810 *l.*

The Appellant after Four Years acquiescence delaying to perfect the said Agreement, the Respondent and his said Wife in Easter Term 1698. brought their Bill to compel an Execution thereof, or to have an Account of the Profits of the said Trust-Estate, and a Sale thereof.

The Appellant put in Five insufficient Answers to the Respondent's Bill purely for delay; and when the same were Reported insufficient, put in Exceptions to the several Reports, which Exceptions upon several Arguments were over-ruled by the late Lord Chancellor in his time, and by the Lord Keeper since; by which means the Appellant delay'd the Respondent 3 Years before any Decree could be obtain'd.

*Thomas Price*, the Appellant's Father, and the said Diana both died whereupon the Respondent took Administration to his said Wife, and reviv'd the said Suit.

That the Appellant by his Answers confesses the Agreement, and that it was made at his Request, and out of kindness to him, but insists that he hath since found some old Articles (which are Cancell'd) pretended to be made on his Father's Marriage, whereby the Lands, as he conceives, were so settled, that the said Ann had not power to make such charge of the 3000 *l.* on all the said Estate (whereas Ann was a Feme Covert at the Execution of these Articles, and therefore void) but the Appellant agrees that some of the Customary Lands were well surrendred in Trust, to (raise the 3000 *l.*) to his said Father, and Diana, and their Heirs; and that Diana being dead, and his Father *Thomas* surviving her, the Customary Lands so surrendred in Trust, are surrendred to him, pending the Suit, and he admitted into the same as Heir to his Father, so insists to hold them discharged, And confesseth he cannot yet distinguish between the Copy-hold Lands (which he admits) are, and Freehold (which he pretends) are not liable to the 3000 *l.*

After many affected delays of the Appellant, Publication passed in Michaelmas Term 1701. and the Cause was set down to be heard the 4th of February last; but there being an Arrear of Causes, it did not come on that Hilary Term.

30th of April last, the Respondent petition'd the Lord Keeper for the Hearing of this Cause, and his Lordship order'd that it shou'd stand early to be heard the First Day of Causes in Trinity Term (with which Order the Appellant's Clerk in Court was served the 4th of May following, and the 1st of June, the Appellant taking Notice of this last Order, petition'd the Lord Keeper that the Cause might stand Adjourned till the latter end of Trinity Term, and his Lordship granted him 10 days, and the Respondent and Appellant's Council attending in Court the 5th of June, (which was the 1st day of Trinity Term.) On Hearing Council of both sides, this Cause was ordered to stand the 1st in the Paper the 12th of June, at which time the Appellant by his Council promis'd to be ready, by which the Appellant had about six Weeks Notice of Hearing.

The 12th of June this Cause accordingly came on to be Heard, and the Appellant made Default; and thereupon 'twas Decreed, that the Appellant shou'd pay the 190 *l.* with Interest from the time of the Agreement, and the remaining 1500 *l.* with Interest at the rate of 60 *l. per Ann.* to the time that the same by the Agreement was to be paid, and from that time 6 *l. per Cent.* Interest for the same, and on Default of such Payment, the said Trust-Estate was decreed to be Sold, and the Appellant to account for the Profits, and the whole 3000 *l.* and Interest, with the Arrears of the Annuity to be paid to the Respondent, unless the Appellant being served with a Subpœna for that purpose, shou'd at the Return thereof show Cause to the contrary.

The 18th of the same June, the Appellant was served with a Subpœna to show Cause against this Decree, and he making Default the 3d of July following, this Decree was made absolute, and afterwards regularly Signed and Inrolled.

It is not pretended by the Appellant, that the Agreement was obtained by Surprize, or Fraud, but that the same is void, as being within the Statute of Frauds and Perjuries, which it is not: For the said Agreement is recited in Writing, and owned by the Appellant under his Hand, and by several Letters, and executed in part by the payment of 810 *l.*

As to the Old Cancell'd Articles, and Conveyances, insisted on to cover the Freehold Lands, the same were in his Custody before he made the Agreement, and never set up till the Filing of the Bill.

As to his insisting to have an Absolute Title as Heir to his Father, in the Customary Lands charged with the said Portion (wherein it is plain he could be only a Trustee) it is so far from being a Bar to the Respondent's Demands, that it is a notorious Breach of Trust.

Note, The Appellant insists on two Points in his Appeal; First, His own Ignorance; Secondly, The Remissness of his own Solicitor. The Respondent hopes neither of these was ever made use of as Reasons for the Reversal of a Decree in this Honourable House.

It is hoped the Appellant shall not so far take advantage of his own wilful Defaults, and vexatious Delays, as to be let in to make use of such Proofs before the House of Lords, as he neglected to read or produce in the Court below, which would tend to introduce a new and inconvenient Practice in Causes of Equity, viz. To decline the Judgment of the Courts of Equity below, as to the Merits of the Cause, and bring them originally to be Heard in the House of Lords. And therefore the Respondent humbly hopes that the Appellant's Petition of Appeal shall stand dismissed with Costs.

Sim. Harcourt;

W. Cowper;